

PREVENTION OF MONEY LAUNDERING ACT, 2002

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PREVENTION OF MONEY LAUNDERING ACT, 2002

An Act to prevent money-laundering and to provide for confiscation of property derived from, or involved in, money-laundering and for matters connected therewith or incidental thereto.

WHEREAS the Political Declaration and Global Programme of Action, annexed to the resolution S-17/2 was adopted by the General Assembly of the United Nations at its seventeenth special session on the twenty-third day of February, 1990;

AND WHEREAS the Political Declaration adopted by the Special Session of the United Nations General Assembly held on 8th to 10th June, 1998 calls upon the Member States to adopt national money-laundering legislation and programme;

AND WHEREAS it is considered necessary to implement the aforesaid resolution and the Declaration.

BE it enacted by Parliament in the Fifty-third Year of the Republic of India as follows :—

CHAPTER I

PRELIMINARY

Short title, extent and commencement.

1. (1) This Act may be called the Prevention of Money Laundering Act, 2002.

(2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

Definitions.

2. (1) In this Act, unless the context otherwise requires,—

- (a) "Adjudicating Authority" means an Adjudicating Authority appointed under sub-section (1) of section 6;
- (b) "Appellate Tribunal" means the Appellate Tribunal established under section 25;
- (c) "Assistant Director" means an Assistant Director appointed under sub-section (1) of section 49;
- (d) "attachment" means prohibition of transfer, conversion, disposition or movement of property by an order issued under Chapter III;
- (e) "banking company" means a banking company or a co-operative bank to which the Banking Regulation Act, 1949 (10 of 1949) applies and includes any bank or banking institution referred to in section 51 of that Act;
- (f) "Bench" means a Bench of the Appellate Tribunal;
- (g) "Chairperson" means the Chairperson of the Appellate Tribunal;
- (h) "chit fund company" means a company managing, conducting or supervising, as foreman, agent or in any other capacity, chits as defined in section 2 of the Chit Funds Act, 1982 (40 of 1982);
- (i) "co-operative bank" shall have the same meaning as assigned to it in clause (dd) of section 2 of the Deposit Insurance and Credit Guarantee Corporation Act, 1961 (47 of 1961);
- (j) "Deputy Director" means a Deputy Director appointed under sub-section (1) of section 49;
- (k) "Director" or "Additional Director" or "Joint Director" means a Director or Additional Director or Joint Director as the case may be, appointed under sub-section (1) of section 49;
- (l) "financial institution" means a financial institution as defined in clause (c) of section 45-I of the Reserve Bank of India Act, 1934 (2 of 1934) and includes a chit fund company, a co-operative bank, a housing finance institution and a non-banking financial company;
- (m) "housing finance institution" shall have the meaning as assigned to it in clause (d) of section 2 of the National Housing Bank Act, 1987 (53 of 1987);
- (n) "intermediary" means a stock-broker, sub-broker, share transfer agent, banker to an issue, trustee to a trust deed, registrar to an issue, merchant banker, underwriter, portfolio manager, investment adviser and any other intermediary associated with securities market and registered under section 12 of the Securities and Exchange Board of India Act, 1992 (15 of 1992);

- (o) "Member" means a Member of the Appellate Tribunal and includes the Chairperson;
- (p) "Money-laundering" has the meaning assigned to it in section 3;
- (q) "non-banking financial company" shall have the same meaning as assigned to it in clause (f) of section 45-I of the Reserve Bank of India Act, 1934 (2 of 1934);
- (r) "notification" means a notification published in the Official Gazette;
- (s) "person" includes—
 - (i) an individual,
 - (ii) a Hindu undivided family,
 - (iii) a company,
 - (iv) a firm,
 - (v) an association of persons or a body of individuals, whether incorporated or not,
 - (vi) every artificial juridical person, not falling within any of the preceding sub-clauses, and
 - (vii) any agency, office or branch owned or controlled by any of the above persons mentioned in the preceding sub-clauses;
- (t) "prescribed" means prescribed by rules made under this Act;
- (u) "proceeds of crime" means any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property;
- (v) "property" means any property or assets of every description, whether corporeal or incorporeal, movable or immovable, tangible or intangible and includes deeds and instruments evidencing title to, or interest in, such property or assets, wherever located;
- (w) "records" include the records maintained in the form of books or stored in a computer or such other form as may be prescribed;
- (x) "Schedule" means the Schedule to this Act;
- (y) "scheduled offence" means—
 - (i) the offences specified under Part A of the Schedule; or
 - (ii) the offences specified under Part B of the Schedule if the total value involved in such offence is thirty lakh rupees or more.
- (z) "Special Court" means a Court of Session designated as Special Court under sub-section (1) of section 43;

- (za) "transfer" includes sale, purchase, mortgage, pledge, gift, loan or any other form of transfer of right, title, possession or lien;
- (zb) "value" means the fair market value of any property on the date of its acquisition by any person, or if such date cannot be determined, the date on which such property is possessed by such person.
- (2) Any reference, in this Act or the Schedule, to any enactment or any provision thereof shall, in relation to an area in which such enactment or such provision is not in force, be construed as a reference to the corresponding law or the relevant provisions of the corresponding law, if any, in force in that area.

CHAPTER II

OFFENCE OF MONEY-LAUNDERING

Offence of money-laundering.

3. Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime and projecting it as untainted property shall be guilty of offence of money-laundering.

Punishment for money-laundering.

4. Whoever commits the offence of money-laundering shall be punishable with rigorous imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine which may extend to five lakh rupees :

Provided that where the proceeds of crime involved in money-laundering relate to any offence specified under paragraph 2 of Part A of the Schedule, the provisions of this section shall have effect as if for the words "which may extend to seven years", the words "which may extend to ten years" had been substituted.

CHAPTER III

ATTACHMENT, ADJUDICATION AND CONFISCATION

Attachment of property involved in money-laundering.

5. (1) Where the Director, or any other officer not below the rank of Deputy Director authorised by him for the purposes of this section, has reason to believe (the reason for such belief to be recorded in writing), on the basis of material in his possession, that—

- (a) any person is in possession of any proceeds of crime;
- (b) such person has been charged of having committed a scheduled offence; and

- (c) such proceeds of crime are likely to be concealed, transferred or dealt with in any manner which may result in frustrating any proceedings relating to confiscation of such proceeds of crime under this Chapter,

he may, by order in writing, provisionally attach such property for a period not exceeding ninety days from the date of the order, in the manner provided in the Second Schedule to the Income-tax Act, 1961 (43 of 1961) and the Director or the other officer so authorised by him, as the case may be, shall be deemed to be an officer under sub-rule (e) of rule 1 of that Schedule:

Provided that no such order of attachment shall be made unless, in relation to an offence under—

- (i) Paragraph 1 of Part A and Part B of the Schedule, a report has been forwarded to a Magistrate under section 173 of the Code of Criminal Procedure, 1973 (2 of 1974); or
 - (ii) Paragraph 2 of Part A of the Schedule, a police report or a complaint has been filed for taking cognizance of an offence by the Special Court constituted under sub-section (1) of section 36 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985).
- (2) The Director, or any other officer not below the rank of Deputy Director, shall, immediately after attachment under sub-section (1), forward a copy of the order, along with the material in his possession, referred to in that sub-section, to the Adjudicating Authority, in a sealed envelope, in the manner as may be prescribed and such Adjudicating Authority shall keep such order and material for such period as may be prescribed.
- (3) Every order of attachment made under sub-section (1) shall cease to have effect after the expiry of the period specified in that sub-section or on the date of an order made under sub-section (2) of section 8, whichever is earlier.
- (4) Nothing in this section shall prevent the person interested in the enjoyment of the immovable property attached under sub-section (1) from such enjoyment.
- Explanation.*—For the purposes of this sub-section, “person interested” in relation to any immovable property, includes all persons claiming or entitled to claim any interest in the property.
- (5) The Director or any other officer who provisionally attaches any property under sub-section (1) shall, within a period of thirty days from such attachment, file a complaint stating the facts of such attachment before the Adjudicating Authority.

Adjudicating authorities, composition, powers, etc.

6. (1) The Central Government shall, by notification, appoint one or more Adjudicating Authorities to exercise jurisdiction, power and authority conferred by or under this Act.

(2) An Adjudicating Authority shall consist of a Chairperson and two other Members:

Provided that one Member each shall be a person having experience in the field of law, administration, finance or accountancy.

(3) A person shall, however, not be qualified for appointment as Member of an Adjudicating Authority:—

(a) in the field of law, unless he—

(i) is qualified for appointment as District Judge; or

(ii) has been a Member of the Indian Legal Service and has held a post in Grade I of that service;

(b) in the field of finance, accountancy or administration unless he possesses such qualifications, as may be prescribed.

(4) The Central Government shall appoint a Member to be the Chairperson of the Adjudicating Authority.

(5) Subject to the provisions of this Act,—

(a) the jurisdiction of the Adjudicating Authority may be exercised by Benches thereof;

(b) a Bench may be constituted by the Chairperson of the Adjudicating Authority with one or two Members as the Chairperson of the Adjudicating Authority may deem fit;

(c) the Benches of the Adjudicating Authority shall ordinarily sit at New Delhi and at such other places as the Central Government may, in consultation with the Chairperson, by notification, specify;

(d) the Central Government shall, by notification, specify the areas in relation to which each Bench of the Adjudicating Authority may exercise jurisdiction.

(6) Notwithstanding anything contained in sub-section (5), the Chairperson may transfer a Member from one Bench to another Bench.

(7) If at any stage of the hearing of any case or matter it appears to the Chairperson or a Member that the case or matter is of such a nature that it ought to be heard by a Bench consisting of two Members, the case or matter may be transferred by the Chairperson or, as the case may be, referred to him for transfer, to such Bench as the Chairperson may deem fit.

(8) The Chairperson and every Member shall hold office as such for a term of five years from the date on which he enters upon his office;

Provided that no Chairperson or other Member shall hold office as such after he has attained the age of sixty-two years.

(9) The salary and allowances payable to and the other terms and conditions of service of the Member shall be such as may be prescribed:

Provided that neither the salary and allowances nor the other terms and conditions of service of the Members shall be varied to his disadvantage after appointment.

(10) If, for reasons other than temporary absence, any vacancy occurs in the office of the Chairperson or any other Member, then, the Central Government shall appoint another person in accordance with the provisions of this Act to fill the vacancy and the proceedings may be continued before the Adjudicating Authority from the stage at which the vacancy is filled.

(11) The Chairperson or any other Member may, by notice in writing under his hand addressed to the Central Government, resign his office:

Provided that the Chairperson or any other Member shall, unless he is permitted by the Central Government to relinquish his office sooner, continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office, whichever is the earliest.

(12) The Chairperson or any other Member shall not be removed from his office except by an order made by the Central Government after giving necessary opportunity of hearing.

(13) In the event of the occurrence of any vacancy in the office of the Chairperson by reason of his death, resignation or otherwise, the senior-most Member shall act as the Chairperson of the Adjudicating Authority until the date on which a new Chairperson, appointed in accordance with the provisions of this Act to fill such vacancy, enters upon his office.

(14) When the Chairperson of the Adjudicating Authority is unable to discharge his functions owing to absence, illness or any other cause, the senior-most Member shall discharge the functions of the Chairperson of the Adjudicating Authority until the date on which the Chairperson of the Adjudicating Authority resumes his duties.

(15) The Adjudicating Authority shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 (5 of 1908), but shall be guided by the principles of natural justice and, subject to the other provisions of this Act, the Adjudicating Authority shall have powers to regulate its own procedure.

Staff of Adjudicating Authorities.

7. (1) The Central Government shall provide each Adjudicating Authority with such officers and employees as that Government may think fit.

(2) The officers and employees of the Adjudicating Authority shall discharge their functions under the general superintendence of the Chairperson of the Adjudicating Authority.

(3) The salaries and allowances and other conditions of service of the officers and employees of the Adjudicating Authority shall be such as may be prescribed.

Adjudication.

8. (1) On receipt of a complaint under sub-section (5) of section 5, or applications made under sub-section (4) of section 17 or under sub-section (10) of section 18 if the Adjudicating Authority has reason to believe that any person has committed an offence under section 3, he may serve a notice of not less than thirty days on such person calling upon him to indicate the sources of his income, earning or assets, out of which or by means of which he has acquired the property attached under sub-section (1) of section 5, or, seized under section 17 or section 18, the evidence on which he relies and other relevant information and particulars, and to show cause why all or any of such properties should not be declared to be the properties involved in money-laundering and confiscated by the Central Government:

Provided that where a notice under this sub-section specifies any property as being held by a person on behalf of any other person, a copy of such notice shall also be served upon such other person:

Provided further that where such property is held jointly by more than one person, such notice shall be served to all persons holding such property.

(2) The Adjudicating Authority shall, after—

(a) considering the reply, if any, to the notice issued under sub-section (1);

(b) hearing the aggrieved person and the Director or any other officer authorised by him in this behalf; and

(c) taking into account all relevant materials placed on record before him,

by an order, record a finding whether all or any of the properties referred to in the notice issued under sub-section (1) are involved in money-laundering:

Provided that if the property is claimed by a person, other than a person to whom the notice had been issued, such person shall also be given an opportunity of being heard to prove that the property is not involved in money-laundering.

(3) Where the Adjudicating Authority decides under sub-section (2) that any property is involved in money-laundering, he shall, by an order in writing, confirm the attachment of the property made under sub-section (1) of section 5 or retention of property or record seized under section 17 or section 18 and record a finding to that effect, such attachment or retention of the seized property or record shall—

- (a) continue during the pendency of the proceedings relating to any scheduled offence before a court; and
- (b) become final after the guilt of the person is proved in the trial court and order of such trial court becomes final.

(4) Where the provisional order of attachment made under sub-section (1) of section 5 has been confirmed under sub-section (3), the Director or any other officer authorised by him in this behalf shall forthwith take the possession of the attached property.

(5) Where on conclusion of a trial for any scheduled offence, the person concerned is acquitted, the attachment of the property or retention of the seized property or record under sub-section (3) and net income, if any, shall cease to have effect.

(6) Where the attachment of any property or retention of the seized property or record becomes final under clause (b) of sub-section (3), the Adjudicating Authority shall, after giving an opportunity of being heard to the person concerned, make an order confiscating such property.

Vesting of property in Central Government.

9. Where an order of confiscation has been made under sub-section (6) of section 8 in respect of any property of a person, all the rights and title in such property shall vest absolutely in the Central Government free from all encumbrances:

Provided that where the Adjudicating Authority, after giving an opportunity of being heard to any other person interested in the property attached under this Chapter, or seized under Chapter V, is of the opinion that any encumbrance on the property or lease-hold interest has been created with a view to defeat the provisions of this Chapter, it may, by order, declare such encumbrances or lease-hold interest to be void and thereupon the aforesaid property shall vest in the Central Government free from such encumbrances or lease-hold interest:

Provided further that nothing in this section shall operate to discharge any person from any liability in respect of such encumbrances which may be enforced against such person by a suit for damages.

Management of properties confiscated under this Chapter.

10. (1) The Central Government may, by order published in the Official Gazette, appoint as many of its officers (not below the rank of a Joint Secretary to the Government of India) as it thinks fit, to perform the functions of an Administrator.

(2) The Administrator appointed under sub-section (1) shall receive and manage the property in relation to which an order has been made under sub-section (6) of section 8 in such manner and subject to such conditions as may be prescribed.

(3) The Administrator shall also take such measures, as the Central Government may direct, to dispose of the property which is vested in the Central Government under section 9.

Power regarding summons, production of documents and evidence, etc.

11. (1) The Adjudicating Authority shall, for the purposes of this Act, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) while trying a suit in respect of the following matters, namely:—

- (a) discovery and inspection;
- (b) enforcing the attendance of any person, including any officer of a banking company or a financial institution or a company, and examining him on oath;
- (c) compelling the production of records;
- (d) receiving evidence on affidavits;
- (e) issuing commissions for examination of witnesses and documents; and
- (f) any other matter which may be prescribed.

(2) All the persons so summoned shall be bound to attend in person or through authorised agents, as the Adjudicating Authority may direct, and shall be bound to state the truth upon any subject respecting which they are examined or make statements, and produce such documents as may be required.

(3) Every proceeding under this section shall be deemed to be a judicial proceeding within the meaning of section 193 and section 228 of the Indian Penal Code (45 of 1860).

CHAPTER IV
OBLIGATIONS OF BANKING COMPANIES, FINANCIAL
INSTITUTIONS AND INTERMEDIARIES

Banking companies, financial institutions and intermediaries to maintain records.

12. (1) Every banking company, financial institution and intermediary shall—

- (a) maintain a record of all transactions, the nature and value of which may be prescribed, whether such transactions comprise of a single transaction or a series of transactions integrally connected to each other, and where such series of transactions take place within a month;
- (b) furnish information of transactions referred to in clause (a) to the Director within such time as may be prescribed;
- (c) verify and maintain the records of the identity of all its clients, in such manner as may be prescribed:

Provided that where the principal officer of a banking company or financial institution or intermediary, as the case may be, has reason to believe that a single transaction or series of transactions integrally connected to each other have been valued below the prescribed value so as to defeat the provisions of this section, such officer shall furnish information in respect of such transactions to the Director within the prescribed time.

(2) The records referred to in sub-section (1) shall be maintained for a period of ten years from the date of cessation of the transactions between the clients and the banking company or financial institution or intermediary, as the case may be.

Powers of director to impose fine.

13. (1) The Director may, either of his own motion or on an application made by any authority, officer or person, call for records referred to in sub-section (1) of section 12 and may make such inquiry or cause such inquiry to be made, as he thinks fit.

(2) If the Director, in the course of any inquiry, finds that a banking company, financial institution or an intermediary or any of its officers has failed to comply with the provisions contained in section 12, then, without prejudice to any other action that may be taken under any other provisions of this Act, he may, by an order, levy a fine on such banking company or financial institution or intermediary which shall not be less than ten thousand rupees but may extend to one lakh rupees for each failure.

(3) The Director shall forward a copy of the order passed under sub-section (2) to every banking company, financial institution or intermediary or person who is a party to the proceedings under that sub-section.

No civil proceedings against banking companies, financial institutions, etc., in certain cases.

14. Save as otherwise provided in section 13, the banking companies, financial institutions, intermediaries and their officers shall not be liable to any civil proceedings against them for furnishing information under clause (b) of sub-section (1) of section 12.

Procedure and manner of furnishing information by banking company, financial institution and intermediary.

15. The Central Government may, in consultation with the Reserve Bank of India, prescribe the procedure and the manner of maintaining and furnishing information under sub-section (1) of section 12 for the purpose of implementing the provisions of this Act.

CHAPTER V

SUMMONS, SEARCHES AND SEIZURES, ETC.

Power of survey.

16. (1) Notwithstanding anything contained in any other provisions of this Act, where an authority, on the basis of material in his possession, has reason to believe (the reasons for such belief to be recorded in writing) that an offence under section 3 has been committed, he may enter any place—

- (i) within the limits of the area assigned to him; or
- (ii) in respect of which he is authorised for the purposes of this section by such other authority, who is assigned the area within which such place is situated,

at which any act constituting the commission of such offence is carried on, and may require any proprietor, employee or any other person who may at that time and place be attending in any manner to, or helping in, such act so as to,—

- (i) afford him the necessary facility to inspect such records as he may require and which may be available at such place;
- (ii) afford him the necessary facility to check or verify the proceeds of crime or any transaction related to proceeds of crime which may be found therein; and

- (iii) furnish such information as he may require as to any matter which may be useful for, or relevant to, any proceedings under this Act.

Explanation.—For the purposes of this sub-section, a place, where an act which constitutes the commission of the offence is carried on, shall also include any other place, whether any activity is carried on therein or not, in which the person carrying on such activity states that any of his records or any part of his property relating to such act are or is kept.

(2) The authority referred to in sub-section (1) shall, after entering any place referred to in that sub-section immediately after completion of survey, forward a copy of the reasons so recorded along with material in his possession, referred to in that sub-section, to the Adjudicating Authority in a sealed envelope in the manner as may be prescribed and such Adjudicating Authority shall keep such reasons and material for such period as may be prescribed.

(3) An authority acting under this section may—

- (i) place marks of identification on the records inspected by him and make or cause to be made extracts or copies therefrom,
- (ii) make an inventory of any property checked or verified by him, and
- (iii) record the statement of any person present in the place which may be useful for, or relevant to, any proceeding under this Act.

Search and seizure.

17. (1) Where the Director, on the basis of information in his possession, has reason to believe (the reason for such belief to be recorded in writing) that any person—

- (i) has committed any act which constitutes money-laundering, or
- (ii) is in possession of any proceeds of crime involved in money-laundering, or
- (iii) is in possession of any records relating to money-laundering,

then, subject to the rules made in this behalf, he may authorise any officer subordinate to him to—

- (a) enter and search any building, place, vessel, vehicle or aircraft where he has reason to suspect that such records or proceeds of crime are kept;
- (b) break open the lock of any door, locker, safe, almirah or other receptacle for exercising the powers conferred by clause (a) where the keys thereof are not available;
- (c) seize any record or property found as a result of such search;

- (d) place marks of identification on such record or make or cause to be made extracts or copies therefrom;
- (e) make a note or an inventory of such record or property;
- (f) examine on oath any person, who is found to be in possession or control of any record or property, in respect of all matters relevant for the purposes of any investigation under this Act:

Provided that no search shall be conducted unless, in relation to an offence under—

- (a) Paragraph 1 of Part A and Part B of the Schedule, a report has been forwarded to a Magistrate under section 173 of the Code of Criminal Procedure, 1973 (2 of 1974); or
 - (b) Paragraph 2 of Part A of the Schedule, a police report or a complaint has been filed for taking cognizance of an offence by the Special Court constituted under sub-section (1) of section 36 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985).
- (2) The authority, who has been authorised under sub-section (1) shall, immediately after search and seizure, forward a copy of the reasons so recorded along with material in his possession, referred to in that sub-section, to the Adjudicating Authority in a sealed envelope, in the manner, as may be prescribed and such Adjudicating Authority shall keep such reasons and material for such period, as may be prescribed.
- (3) Where an authority, upon information obtained during survey under section 16, is satisfied that any evidence shall be or is likely to be concealed or tampered with, he may, for reasons to be recorded in writing, enter and search the building or place where such evidence is located and seize that evidence :

Provided that no authorisation referred to in sub-section (1) shall be required for search under this sub-section.

- (4) The authority, seizing any record or property under this section, shall, within a period of thirty days from such seizure, file an application, requesting for retention of such record or property, before the Adjudicating Authority.

Search of persons.

18. (1) If an authority, authorised in this behalf by the Central Government by general or special order, has reason to believe (the reason for such belief to be recorded in writing) that any person has secreted about his person or in anything under his possession, ownership or control, any record or proceeds of crime which may be useful for or relevant to any

proceedings under this Act, he may search that person and seize such record or property which may be useful for or relevant to any proceedings under this Act.

(2) The authority, who has been authorised under sub-section (1) shall, immediately after search and seizure, forward a copy of the reasons so recorded along with material in his possession, referred to in that sub-section, to the Adjudicating Authority in a sealed envelope, in the manner, as may be prescribed, and such Adjudicating Authority shall keep such reasons and material for such period, as may be prescribed.

(3) Where an authority is about to search any person, he shall, if such person so requires, take such person within twenty-four hours to the nearest Gazetted Officer, superior in rank to him, or a Magistrate:

Provided that the period of twenty-four hours shall exclude the time necessary for the journey undertaken to take such person to the nearest Gazetted Officer, superior in rank to him, or Magistrate's Court.

(4) If the requisition under sub-section (3) is made, the authority shall not detain the person for more than twenty-four hours prior to taking him before the Gazetted Officer, superior in rank to him, or the Magistrate referred to in that sub-section:

Provided that the period of twenty-four hours shall exclude the time necessary for the journey from the place of detention to the office of the Gazetted Officer, superior in rank to him, or the Magistrate's Court.

(5) The Gazetted Officer or the Magistrate before whom any such person is brought shall, if he sees no reasonable ground for search, forthwith discharge such person but otherwise shall direct that search be made.

(6) Before making the search under sub-section (1) or sub-section (5), the authority shall call upon two or more persons to attend and witness the search, and the search shall be made in the presence of such persons.

(7) The authority shall prepare a list of record or property seized in the course of the search and obtain the signatures of the witnesses on the list.

(8) No female shall be searched by any one except a female.

(9) The authority shall record the statement of the person searched under sub-section (1) or sub-section (5) in respect of the records or proceeds of crime found or seized in the course of the search:

Provided that no search of any person shall be made unless, in relation to an offence under—

(a) Paragraph 1 of Part A or Paragraph 1 or Paragraph 2 or Paragraph 3 or Paragraph 4 or Paragraph 5 of Part B of the Schedule, a report has been forwarded to a Magistrate under section 173 of the Code of Criminal Procedure, 1973 (2 of 1974); or

(b) Paragraph 2 of Part A of the Schedule, a police report or a complaint has been filed for taking cognizance of an offence by the Special Court constituted under sub-section (1) of section 36 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985).

(10) The authority, seizing any record or property under sub-section (1) shall, within a period of thirty days from such seizure, file an application requesting for retention of such record or property, before the Adjudicating Authority.

Power to arrest.

19. (1) If the Director, Deputy Director, Assistant Director or any other officer authorised in this behalf by the Central Government by general or special order, has on the basis of material in his possession reason to believe (the reason for such belief to be recorded in writing) that any person has been guilty of an offence punishable under this Act, he may arrest such person and shall, as soon as may be, inform him of the grounds for such arrest.

(2) The Director, Deputy Director, Assistant Director or any other officer shall, immediately after arrest of such person under sub-section (1), forward a copy of the order along with the material in his possession, referred to in that sub-section, to the Adjudicating Authority in a sealed envelope, in the manner, as may be prescribed and such Adjudicating Authority shall keep such order and material for such period, as may be prescribed.

(3) Every person arrested under sub-section (1) shall, within twenty-four hours, be taken to a Judicial Magistrate or a Metropolitan Magistrate, as the case may be, having jurisdiction:

Provided that the period of twenty-four hours shall exclude the time necessary for the journey from the place of arrest to the Magistrate's Court.

Retention of property.

20. (1) Where any property has been seized under section 17 or section 18, and the officer authorised by the Director in this behalf has, on the basis of material in his possession, reason to believe (the reason for such belief to be recorded by him in writing) that such property is required to be retained for the purposes of adjudication under section 8, such property may be retained for a period not exceeding three months from the end of the month in which such property was seized.

(2) The officer authorised by the Director immediately after he has passed an order for retention of the property for purposes of adjudication under section 8 shall forward a copy of the order along with the material in his possession, referred to in sub-section (1), to the Adjudicating Authority in

a sealed envelope, in the manner as may be prescribed and such Adjudicating Authority shall keep such order and material for such period as may be prescribed.

(3) On the expiry of the period specified in sub-section (1), the property shall be returned to the person from whom such property was seized unless the Adjudicating Authority permits retention of such property beyond the said period.

(4) The Adjudicating Authority, before authorising the retention of such property beyond the period specified in sub-section (1), shall satisfy himself that the property is *prima facie* involved in money-laundering and the property is required for the purposes of adjudication under section 8.

(5) After passing the order of confiscation under sub-section (6) of section 8, the Adjudicating Authority shall direct the release of all properties other than the properties involved in money-laundering to the person from whom such properties were seized.

(6) Notwithstanding anything contained in sub-section (5), the Director or any officer authorised by him in this behalf may withhold the release of any property until filing of appeal under section 26 or forty-five days from the date of order under sub-section (5), whichever is earlier, if he is of the opinion that such property is relevant for the proceedings before the Appellate Tribunal.

Retention of records.

21. (1) Where any records have been seized, under section 17, or section 18, and the Investigating Officer or any other officer authorised by the Director in this behalf has reason to believe that any of such records are required to be retained for any inquiry under this Act, he may retain such records for a period not exceeding three months from the end of the month in which such records were seized.

(2) The person, from whom records were seized, shall be entitled to obtain copies of records retained under sub-section (1).

(3) On the expiry of the period specified under sub-section (1), the records shall be returned to the person from whom such records were seized unless the Adjudicating Authority permits retention of such records beyond the said period.

(4) The Adjudicating Authority, before authorising the retention of such records beyond the period mentioned in sub-section (1), shall satisfy himself that the records are required for the purposes of adjudication under section 8.

(5) After passing of an order of confiscation under sub-section (6) of section 8, the Adjudicating Authority shall direct the release of the records to the person from whom such records were seized.

(6) Notwithstanding anything contained in sub-section (5), the Director or any officer authorised by him in this behalf may withhold the release of any records until filing of appeal under section 26 or after forty-five days from the date of order under sub-section (5), whichever is earlier, if he is of the opinion that such records are relevant for the proceedings before the Appellate Tribunal.

Presumption as to records or property in certain cases.

22. (1) Where any records or property are or is found in the possession or control of any person in the course of a survey or a search, it shall be presumed that—

- (i) such records or property belong or belongs to such person;
- (ii) the contents of such records are true; and
- (iii) the signature and every other part of such records which purport to be in the handwriting of any particular person or which may reasonably be assumed to have been signed by, or to be in the handwriting of, any particular person, are in that person's handwriting, and in the case of a record, stamped, executed or attested, that it was executed or attested by the person by whom it purports to have been so stamped, executed or attested.

(2) Where any records have been received from any place outside India, duly authenticated by such authority or person and in such manner as may be prescribed, in the course of proceedings under this Act, the Special Court, the Appellate Tribunal or the Adjudicating Authority, as the case may be, shall—

- (a) presume, that the signature and every other part of such record which purports to be in the handwriting of any particular person or which the court may reasonably assume to have been signed by, or to be in the handwriting of, any particular person, is in that person's handwriting; and in the case of a record executed or attested, that it was executed or attested by the person by whom it purports to have been so executed or attested;
- (b) admit the document in evidence, notwithstanding that it is not duly stamped, if such document is otherwise admissible in evidence.

Presumption in inter-connected transactions.

23. Where money-laundering involves two or more inter-connected transactions and one or more such transactions is or are proved to be involved in money-laundering, then for the purposes of adjudication or confisca-

tion under section 8, it shall, unless otherwise proved to the satisfaction of the Adjudicating Authority, be presumed that the remaining transactions form part of such inter-connected transactions.

Burden of proof.

24. When a person is accused of having committed the offence under section 3, the burden of proving that proceeds of crime are untainted property shall be on the accused.

CHAPTER VI

APPELLATE TRIBUNAL

Establishment of Appellate Tribunal.

25. The Central Government shall, by notification, establish an Appellate Tribunal to hear appeals against the orders of the Adjudicating Authority and the authorities under this Act.

Appeals to Appellate Tribunal.

26. (1) Save as otherwise provided in sub-section (3), the Director or any person aggrieved by an order made by the Adjudicating Authority under this Act, may prefer an appeal to the Appellate Tribunal.

(2) Any banking company, financial institution or intermediary aggrieved by any order of the Director made under sub-section (2) of section 13, may prefer an appeal to the Appellate Tribunal.

(3) Every appeal preferred under sub-section (1) or sub-section (2) shall be filed within a period of forty-five days from the date on which a copy of the order made by the Adjudicating Authority or Director is received and it shall be in such form and be accompanied by such fee as may be prescribed:

Provided that the Appellate Tribunal may, after giving an opportunity of being heard entertain an appeal after the expiry of the said period of forty-five days if it is satisfied that there was sufficient cause for not filing it within that period.

(4) On receipt of an appeal under sub-section (1) or sub-section (2), the Appellate Tribunal may, after giving the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.

(5) The Appellate Tribunal shall send a copy of every order made by it to the parties to the appeal and to the concerned Adjudicating Authority or the Director, as the case may be.

(6) The appeal filed before the Appellate Tribunal under sub-section (1) or sub-section (2) shall be dealt with by it as expeditiously as possible and

endeavour shall be made by it to dispose of the appeal finally within six months from the date of filing of the appeal.

Composition, etc., of Appellate Tribunal.

27. (1) The Appellate Tribunal shall consist of a Chairperson and two other Members.

(2) Subject to the provisions of this Act,—

- (a) the jurisdiction of the Appellate Tribunal may be exercised by Benches thereof;
 - (b) a Bench may be constituted by the Chairperson with one or two Members as the Chairperson may deem fit;
 - (c) the Benches of the Appellate Tribunal shall ordinarily sit at New Delhi and at such other places as the Central Government may, in consultation with the Chairperson, by notification, specify;
 - (d) the Central Government shall, by notification, specify the areas in relation to which each Bench of the Appellate Tribunal may exercise jurisdiction.
- (3) Notwithstanding anything contained in sub-section (2), the Chairperson may transfer a Member from one Bench to another Bench.
- (4) If at any stage of the hearing of any case or matter it appears to the Chairperson or a Member that the case or matter is of such a nature that it ought to be heard by a Bench consisting of two Members, the case or matter may be transferred by the Chairperson or, as the case may be, referred to him for transfer, to such Bench as the Chairperson may deem fit.

Qualifications for appointment.

28. (1) A person shall not be qualified for appointment as Chairperson unless he is or has been a Judge of the Supreme Court or of a High Court.

(2) A person shall not be qualified for appointment as a Member unless he—

- (a) is or has been a Judge of a High Court; or
- (b) has been a Member of the Indian Legal Service and has held a post in Grade I of that Service for at least three years; or
- (c) has been a member of the Indian Revenue Service and has held the post of Commissioner of Income-tax or equivalent post in that Service for at least three years; or
- (d) has been a member of the Indian Economic Service and has held the post of Joint Secretary or equivalent post in that Service for at least three years; or

- (e) has been a member of the Indian Customs and Central Excise Service and has held the post of a Joint Secretary or equivalent post in that Service for at least three years; or
- (f) has been in the practice of accountancy as a chartered accountant under the Chartered Accountants Act, 1949 (38 of 1949) or as a registered accountant under any law for the time being in force or partly as a registered accountant and partly as a chartered accountant for at least ten years:

Provided that one of the members of the Appellate Tribunal shall be from category mentioned in clause (f); or

- (g) has been a member of the Indian Audit and Accounts Service and has held the post of Joint Secretary or equivalent post in that Service for at least three years.
- (3) No sitting Judge of the Supreme Court or of a High Court shall be appointed under this section except after consultation with the Chief Justice of India.

Term of office.

29. The Chairperson and every other Member shall hold office as such for a term of five years from the date on which he enters upon his office:

Provided that no Chairperson or other Member shall hold office as such after he has attained,—

- (a) in the case of the Chairperson, the age of sixty-eight years;
- (b) in the case of any other Member, the age of sixty-five years.

Conditions of service.

30. The salary and allowances payable to and the other terms and conditions of service of the Chairperson and other Members shall be such as may be prescribed:

Provided that neither the salary and allowances nor the other terms and conditions of service of the Chairperson or any other Member shall be varied to his disadvantage after appointment.

Vacancies.

31. If, for reason other than temporary absence, any vacancy occurs in the office of the Chairperson or any other Member, then the Central Government shall appoint another person in accordance with the provisions of this Act to fill the vacancy and the proceedings may be continued before the Appellate Tribunal from the stage at which the vacancy is filled.

Resignation and removal.

32. (1) The Chairperson or any other Member may, by notice in writing under his hand addressed to the Central Government, resign his office:

Provided that the Chairperson or any other Member shall, unless he is permitted by the Central Government to relinquish his office sooner, continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office, whichever is the earliest.

(2) The Chairperson or any other Member shall not be removed from his office except by an order made by the Central Government on the ground of proved misbehaviour or incapacity, after an inquiry made by a person appointed by the President in which such Chairperson or any other Member concerned had been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

Member to act as Chairperson in certain circumstances.

33. (1) In the event of the occurrence of any vacancy in the office of the Chairperson by reason of his death, resignation or otherwise, the senior-most Member shall act as the Chairperson until the date on which a new Chairperson, appointed in accordance with the provisions of this Act to fill such vacancy, enters upon his office.

(2) When the Chairperson is unable to discharge his functions owing to absence, illness or any other cause, the seniormost Member shall discharge the functions of the Chairperson until the date on which the Chairperson resumes his duties.

Staff of Appellate Tribunal.

34. (1) The Central Government shall provide the Appellate Tribunal with such officers and employees as that Government may think fit.

(2) The officers and employees of the Appellate Tribunal shall discharge their functions under the general superintendence of the Chairperson.

(3) The salaries and allowances and other conditions of service of the officers and employees of the Appellate Tribunal shall be such as may be prescribed.

Procedure and powers of Appellate Tribunal.

35. (1) The Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 (5 of 1908), but shall be guided by the principles of natural justice and, subject to the other provisions of this Act, the Appellate Tribunal shall have powers to regulate its own procedure.

(2) The Appellate Tribunal shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) while trying a suit, in respect of the following matters, namely:—

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of documents;
- (c) receiving evidence on affidavits;
- (d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), requisitioning any public record or document or copy of such record or document from any office;
- (e) issuing commissions for the examination of witnesses or documents;
- (f) reviewing its decisions;
- (g) dismissing a representation for default or deciding it *ex parte*;
- (h) setting aside any order of dismissal of any representation for default or any order passed by it *ex parte*; and
- (i) any other matter, which may be, prescribed by the Central Government.

(3) An order made by the Appellate Tribunal under this Act shall be executable by the Appellate Tribunal as a decree of civil court and, for this purpose, the Appellate Tribunal shall have all the powers of a civil court.

(4) Notwithstanding anything contained in sub-section (3), the Appellate Tribunal may transmit any order made by it to a civil court having local jurisdiction and such civil court shall execute the order as if it were a decree made by that court.

(5) All proceedings before the Appellate Tribunal shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 of the Indian Penal Code (45 of 1860) and the Appellate Tribunal shall be deemed to be a civil court for the purposes of sections 345 and 346 of the Code of Criminal Procedure, 1973 (2 of 1974).

Distribution of business amongst Benches.

36. Where any Benches are constituted, the Chairperson may, from time to time, by notification, make provisions as to the distribution of the business of the Appellate Tribunal amongst the Benches and also provide for the matters which may be dealt with by each Bench.

Power of Chairperson to transfer cases.

37. On the application of any of the parties and after notice to the parties, and after hearing such of them as he may desire to be heard, or on his own motion without such notice, the Chairperson may transfer any case pending before one Bench, for disposal, to any other Bench.

Decision to be by majority.

38. If the Members of a Bench consisting of two Members differ in opinion on any point, they shall state the point or points on which they differ, and make a reference to the Chairperson who shall either hear the point or points himself or refer the case for hearing on such point or points by one or more of the other Members of the Appellate Tribunal and such point or points shall be decided according to the opinion of the majority of the Members of the Appellate Tribunal who have heard the case, including those who first heard it.

Right of appellant to take assistance of authorised representative and of Government to appoint presenting officers.

39. (1) A person preferring an appeal to the Appellate Tribunal under this Act may either appear in person or take the assistance of an authorised representative of his choice to present his case before the Appellate Tribunal.

Explanation.—For the purposes of this sub-section, the expression “authorised representative” shall have the same meaning as assigned to it under sub-section (2) of section 288 of the Income-tax Act, 1961 (43 of 1961).

(2) The Central Government or the Director may authorise one or more authorised representatives or any of its officers to act as presenting officers and every person so authorised may present the case with respect to any appeal before the Appellate Tribunal.

Members, etc., to be public servants.

40. The Chairperson, Members and other officers and employees of the Appellate Tribunal, the Adjudicating Authority, Director and the officers subordinate to him shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code (45 of 1860).

Civil court not to have jurisdiction.

41. No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Director, an Adjudicating Authority or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

Appeal to High Court.

42. Any person aggrieved by any decision or order of the Appellate Tribunal may file an appeal to the High Court within sixty days from the date of communication of the decision or order of the Appellate Tribunal to him on any question of law *or fact* arising out of such order:

Provided that the High Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days.

Explanation.—For the purposes of this section, “High Court” means—

- (i) the High Court within the jurisdiction of which the aggrieved party ordinarily resides or carries on business or personally works for gain; and
- (ii) where the Central Government is the aggrieved party, the High Court within the jurisdiction of which the respondent, or in a case where there are more than one respondent, any of the respondents, ordinarily resides or carries on business or personally works for gain.

CHAPTER VII
SPECIAL COURTS

Special Courts.

43. (1) The Central Government, in consultation with the Chief Justice of the High Court, shall for trial of offence punishable under section 4 by notification designate one or more Courts of Session as Special Court or Special Courts for such area or areas or for such case or class or group of cases as may be specified in the notification.

Explanation.—In this sub-section, “High Court” means the High Court of the State in which a Sessions Court designated as Special Court was functioning immediately before such designation.

(2) While trying an offence under this Act, a Special Court shall also try an offence other than an offence referred to in sub-section (1), with which the accused may, under the Code of Criminal Procedure, 1973 (2 of 1974), be charged at the same trial.

Offences triable by Special Courts.

44. (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),—

- (a) the scheduled offence and the offence punishable under section 4 shall be triable only by the Special Court constituted for the area in which the offence has been committed:

Provided that the Special Court, trying a scheduled offence before the commencement of this Act, shall contribute to try such scheduled offence; or

- (b) a Special Court may, upon perusal of police report of the facts which constitute an offence under this act or upon a complaint made by an authority authorised in this behalf under this Act take cognizance of the offence for which the accused is committed to it for trial.

(2) Nothing contained in this section shall be deemed to affect the special powers of the High Court regarding bail under section 439 of the Code of Criminal Procedure, 1973 (2 of 1974) and the High Court may exercise such powers including the power under clause (b) of sub-section (1) of that section as if the reference to "Magistrate" in that section includes also a reference to a "Special Court" designated under section 43.

Offences to be cognizable and non-bailable.

45. (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),—

- (a) every offence punishable under this Act shall be cognizable;
- (b) no person accused of an offence punishable for a term of imprisonment of more than three years *under Part A of the Schedule* shall be released on bail or on his own bond unless—
 - (i) the Public Prosecutor has been given an opportunity to oppose the application for such release; and
 - (ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail :

Provided that a person, who, is under the age of sixteen years, or is a woman or is sick or infirm, may be released on bail, if the Special Court so directs :

Provided further that the Special Court shall not take cognizance of any offence punishable under section 4 except upon a complaint in writing made by—

- (i) the Director; or
- (ii) any officer of the Central Government or State Government authorised in writing in this behalf by the Central Government by a general or a special order made in this behalf by that Government.

(2) The limitation on granting of bail specified in clause (b) of sub-section (1) is in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force on granting of bail.

Application of Code of Criminal Procedure, 1973 to proceedings before Special Court.

46. (1) Save as otherwise provided in this Act, the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) (including the provisions as to bails or bonds), shall apply to the proceedings before a Special Court and for the purposes of the said provisions, the Special Court shall be deemed to be a Court of Session and the persons conducting the prosecution before the Special Court, shall be deemed to be a Public Prosecutor :

Provided that the Central Government may also appoint for any case or class or group of cases a Special Public Prosecutor.

(2) A person shall not be qualified to be appointed as a Public Prosecutor or a Special Public Prosecutor under this section unless he has been in practice as an Advocate for not less than seven years, under the Union or a State, requiring special knowledge of law.

(3) Every person appointed as a Public Prosecutor or a Special Public Prosecutor under this section shall be deemed to be a Public Prosecutor within the meaning of clause (u) of section 2 of the Code of Criminal Procedure, 1973 (2 of 1974) and the provisions of that Code shall have effect accordingly.

Appeal and revision.

47. The High Court may exercise, so far as may be applicable, all the powers conferred by Chapter XXIX or Chapter XXX of the Code of Criminal Procedure, 1973 (2 of 1974), on a High Court, as if a Special Court within the local limits of the jurisdiction of the High Court were a Court of Session trying cases within the local limits of the jurisdiction of the High Court.

CHAPTER VIII

AUTHORITIES

Authorities under Act.

48. There shall be the following classes of authorities for the purposes of this Act, namely :—

- (a) Director or Additional Director or Joint Director,
- (b) Deputy Director,
- (c) Assistant Director, and

- (d) such other class of officers as may be appointed for the purposes of this Act.

Appointment and powers of authorities and other officers.

49. (1) The Central Government may appoint such persons as it thinks fit to be authorities for the purposes of this Act.

(2) Without prejudice to the provisions of sub-section (1), the Central Government may authorise the Director or an Additional Director or a Joint Director or a Deputy Director or an Assistant Director appointed under that sub-section to appoint other authorities below the rank of an Assistant Director.

(3) Subject to such conditions and limitations as the Central Government may impose, an authority may exercise the powers and discharge the duties conferred or imposed on it under this Act.

Powers of authorities regarding summons, production of documents and to give evidence, etc.

50. (1) The Director shall, for the purposes of section 13, have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908) while trying a suit in respect of the following matters, namely :—

- (a) discovery and inspection;
- (b) enforcing the attendance of any person, including any officer of a banking company or a financial institution or a company, and examining him on oath;
- (c) compelling the production of records;
- (d) receiving evidence on affidavits;
- (e) issuing commissions for examination of witnesses and documents; and
- (f) any other matter which may be prescribed.

(2) The Director, Additional Director, Joint Director, Deputy Director or Assistant Director shall have power to summon any person whose attendance he considers necessary whether to give evidence or to produce any records during the course of any investigation or proceeding under this Act.

(3) All the persons so summoned shall be bound to attend in person or through authorised agents, as such officer may direct, and shall be bound to state the truth upon any subject respecting which they are examined or make statements, and produce such documents as may be required.

(4) Every proceeding under sub-sections (2) and (3) shall be deemed to be a judicial proceeding within the meaning of section 193 and section 228 of the Indian Penal Code (45 of 1860).

(5) Subject to any rules made in this behalf by the Central Government, any officer referred to in sub-section (2) may impound and retain in his custody for such period, as he thinks fit, any records produced before him in any proceedings under this Act :

Provided that an Assistant Director or a Deputy Director shall not—

- (a) impound any records without recording his reasons for so doing; or
- (b) retain in his custody any such records for a period exceeding three months, without obtaining the previous approval of the Director.

Jurisdiction of authorities.

51. (1) The authorities shall exercise all or any of the powers and perform all or any of the functions conferred on, or, assigned, as the case may be, to such authorities by or under this act or the rules framed thereunder in accordance with such directions as the Central Government may issue for the exercise of powers and performance of the functions by all or any of the authorities.

(2) In issuing the directions or orders referred to in sub-section (1), the Central Government may have regard to any one or more of the following criteria, namely:—

- (a) territorial area;
- (b) classes of persons;
- (c) classes of cases; and
- (d) any other criterion specified by the Central Government in this behalf.

Power of Central Government to issue directions, etc.

52. The Central Government may, from time to time, issue such orders, instructions and directions to the authorities as it may deem fit for the proper administration of this Act and such authorities and all other persons employed in execution of this Act shall observe and follow such orders, instructions and directions of the Central Government :

Provided that no such orders, instructions or directions shall be issued so as to—

- (a) require any authority to decide a particular case in a particular manner; or
- (b) interfere with the discretion of the Adjudicating Authority in exercise of his functions.

Empowerment of certain officers.

53. The Central Government may, by a special or general order, empower an officer not below the rank of Director of the Central Government or of a State Government to act as an authority under this Act:

Provided that the Central Government may empower an officer below the rank of Director if the officer of the rank of the Director or above are not available in a particular area.

Certain officers to assist in inquiry, etc.

54. The following officers are hereby empowered and required to assist the authorities in the enforcement of this Act, namely:—

- (a) officers of the Customs and Central Excise Departments;
- (b) officers appointed under sub-section (1) of section 5 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985);
- (c) income-tax authorities under sub-section (1) of section 117 of the Income-tax Act, 1961 (43 of 1961);
- (d) officers of the stock exchange recognised under section 4 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956);
- (e) officers of the Reserve Bank of India constituted under sub-section (1) of section 3 of the Reserve Bank of India Act, 1934 (2 of 1934);
- (f) officers of Police;
- (g) officers of enforcement appointed under sub-section (1) of section 36 of the Foreign Exchange Management Act, 1999 (40 of 1999);
- (h) officers of the Securities and Exchange Board of India established under section 3 of the Securities and Exchange Board of India Act, 1992 (15 of 1992);
- (i) officers of any other body corporate constituted or established under a Central Act or a State Act;
- (j) such other officers of the Central Government, State Government, local authorities or banking companies as the Central Government may, by notification, specify, in this behalf.

CHAPTER IX**RECIPROCAL ARRANGEMENT FOR ASSISTANCE IN CERTAIN
MATTERS AND PROCEDURE FOR ATTACHMENT AND
CONFISCATION OF PROPERTY****Definitions.**

55. In this Chapter, unless the context otherwise requires,—

- (a) "contracting State" means any country or place outside India in respect of which arrangements have been made by the Central Government with the Government of such country through a treaty or otherwise;
- (b) "identifying" includes establishment of a proof that the property was derived from, or used in the commission of an offence under section 3;
- (c) "tracing" means determining the nature, source, disposition, movement, title or ownership of property.

Agreements with foreign countries.

56. (1) The Central Government may enter into an agreement with the Government of any country outside India for—

- (a) enforcing the provisions of this Act;
- (b) exchange of information for the prevention of any offence under this Act or under the corresponding law in force in that country or investigation of cases relating to any offence under this Act;

and may, by notification in the Official Gazette, make such provisions as may be necessary for implementing the agreement.

(2) The Central Government may, by notification in the Official Gazette, direct that the application of this Chapter in relation to a contracting State with which reciprocal arrangements have been made, shall be subject to such conditions, exceptions or qualifications as are specified in the said notification.

Letters of request to a contracting State in certain cases.

57. (1) Notwithstanding anything contained in this Act or the Code of Criminal Procedure, 1973 (2 of 1974) if, in the course of an investigation into an offence or other proceedings under this Act, an application is made to a Special Court by the Investigating Officer or any officer superior in rank to the Investigating Officer that any evidence is required in connection with investigation into an offence or proceedings under this Act and he is of the opinion that such evidence may be available in any place in a contracting State, and the Special Court, on being satisfied that such evidence is required in connection with the investigation into an offence or proceedings under this Act, may issue a letter of request to the court or an authority in the contracting State competent to deal with such request to—

- (i) examine facts and circumstances of the case,
- (ii) take such steps as the Special Court may specify in such letter of request, and

(iii) forward all the evidence so taken or collected to the Special Court issuing such letter of request.

(2) The letter of request shall be transmitted in such manner as the Central Government may specify in this behalf.

(3) Every statement recorded or document or thing received under subsection (1) shall be deemed to be the evidence collected during the course of investigation.

Assistance to a contracting State in certain cases.

58. Where a letter of request is received by the Central Government from a court or authority in a contracting State requesting for investigation into an offence or proceedings under this Act and forwarding to such court or authority any evidence connected therewith, the Central Government may forward such letter of request to the Special Court or to any authority under the Act as it thinks fit for execution of such request in accordance with the provisions of this Act or as the case may be, any other law for the time being in force.

Reciprocal arrangements for processes and assistance for transfer of accused persons.

59. (1) Where a Special Court, in relation to an offence punishable under section 4, desires that—

- (a) a summons to an accused person, or
- (b) a warrant for the arrest of an accused person, or
- (c) a summons to any person requiring him to attend and produce a document or other thing, or to produce a document or other thing, or to produce it, or
- (d) a search warrant,

issued by it shall be served or executed at any place in any contracting State, it shall send such summons or warrant in duplicate in such form, to such Court, Judge or Magistrate through such authorities, as the Central Government may, by notification, specify in this behalf and that Court, Judge or Magistrate, as the case may be, shall cause the same to be executed.

(2) Where a Special Court, in relation to an offence punishable under section 4 has received for service or execution—

- (a) a summons to an accused person, or
- (b) a warrant for the arrest of an accused person, or
- (c) a summons to any person requiring him to attend and produce a document or other thing, or to produce it, or
- (d) a search-warrant,

issued by a Court, Judge or Magistrate in a contracting State, it shall, cause the same to be served or executed as if it were a summons or warrant received by it from another Court in the said territories for service or execution within its local jurisdiction; and where—

- (i) a warrant of arrest has been executed, the person arrested shall, be dealt with in accordance with the procedure specified under section 19;
- (ii) a search warrant has been executed, the things found in this search shall, so far as possible be dealt with in accordance with the procedure specified under sections 17 and 18:

Provided that in a case where a summon or search warrant received from a contracting State has been executed, the documents or other things produced or things found in the search shall be forwarded to the Court issuing the summons or search warrant through such authority as the Central Government may, by notification, specify in this behalf.

(3) Where a person transferred to a contracting State pursuant to sub-section (2) is a prisoner in India, the Special Court or the Central Government may impose such conditions as that Court or Government deems fit.

(4) Where the person transferred to India pursuant to sub-section (1) is a prisoner in a contracting State, the Special Court in India shall ensure that the conditions subject to which the prisoner is transferred to India are complied with and such prisoner shall be kept in such custody subject to such conditions as the Central Government may direct in writing.

Attachment, seizure and confiscation, etc., of property in a contracting State or India.

60. (1) Where the Director has made an order for attachment of any property under section 5 or where an Adjudicating Authority has made an order confirming such attachment or confiscation of any property under section 8, and such property is suspected to be in a contracting State, the Special Court, on an application by the Director or the Administrator appointed under sub-section (1) of section 10, as the case may be, may issue a letter of request to a court or an authority in the contracting State for execution of such order.

(2) Where a letter of request is received by the Central Government from a court or an authority in a contracting State requesting attachment or confiscation of the property in India, derived or obtained, directly or indirectly, by any person from the commission of an offence under section 3 committed in that contracting State the Central Government may forward such letter of request to the Director, as it thinks fit, for execution in accordance with the provisions of this Act.

(3) The Director shall, on receipt of a letter of request under section 58 or section 59, direct any authority under this Act to take all steps necessary for tracing and identifying such property.

(4) The steps referred to in sub-section (3) may include any inquiry, investigation or survey in respect of any person, place, property, assets, documents, books of account in any bank or public financial institutions or any other relevant matters.

(5) Any inquiry, investigation or survey referred to in sub-section (4) shall be carried out by an authority mentioned in sub-section (3) in accordance with such directions issued in accordance with the provisions of this Act.

(6) The provisions of this Act relating to attachment, adjudication, confiscation and vesting of property in Central Government contained in Chapter III and survey, searches and seizures contained in Chapter V shall apply to the property in respect of which letter of request is received from a court or contracting State for attachment or confiscation of property.

Procedure in respect of letter of request.

61. Every letter of request, summons or warrant, received by the Central Government from and every letter of request, summons or warrant, to be transmitted to a contracting State under this Chapter shall be transmitted to a contracting State or, as the case may be, sent to the concerned Court in India and in such form and in such manner as the Central Government may, by notification, specify in this behalf.

CHAPTER X MISCELLANEOUS

Punishment for vexatious search.

62. Any authority or officer exercising powers under this Act or any rules made thereunder, who, without reasons recorded in writing,—

(a) searches or causes to be searched any building or place; or

(b) detains or searches or arrests any person,

shall for every such offence be liable on conviction for imprisonment for a term which may extend to two years or fine which may extend to fifty thousand rupees or both.

Punishment for false information or failure to give information, etc.

63. (1) Any person wilfully and maliciously giving false information and so causing an arrest or a search to be made under this Act shall on conviction be liable for imprisonment for a term which may extend to two years or with fine which may extend to fifty thousand rupees or both.

(2) If any person,—

- (a) being legally bound to state the truth of any matter relating to an offence under section 3, refuses to answer any question put to him by an authority in the exercise of its powers under this Act; or
- (b) refuses to sign any statement made by him in the course of any proceedings under this Act, which an authority may legally require to sign; or
- (c) to whom a summon is issued under section 50 either to attend to give evidence or produce books of account or other documents at a certain place and time, omits to attend or produce books of account or documents at the place or time,

he shall pay, by way of penalty, a sum which shall not be less than five hundred rupees but which may extend to ten thousand rupees for each such default or failure.

(3) No order under this section shall be passed by an authority referred to in sub-section (2) unless the person on whom the penalty is proposed to be imposed is given an opportunity of being heard in the matter by such authority.

Cognizance of offences.

64. (1) No court shall take cognizance of any offence under section 62 or sub-section (1) of section 63 except with the previous sanction of the Central Government.

(2) The Central Government shall, by an order either give sanction or refuse to give sanction within ninety days of the receipt of the request in this behalf.

Code of Criminal Procedure, 1973 to apply.

65. The provisions of the Code of Criminal Procedure, 1973 (2 of 1974) shall apply, in so far as they are not inconsistent with the provisions of this Act, to arrest, search and seizure, attachment, confiscation, investigation, prosecution and all other proceedings under this Act.

Disclosure of information.

66. The Director or any other authority specified by him by a general or special order in this behalf may furnish or cause to be furnished to—

- (i) any officer, authority or body performing any functions under any law relating to imposition of any tax, duty or cess or to dealings in foreign exchange, or prevention of illicit traffic in the narcotic drugs and psychotropic substances under the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985); or
- (ii) such other officer, authority or body performing functions under any other law as the Central Government may, if in its opinion it is

necessary so to do in the public interest, specify, by notification in the Official Gazette, in this behalf, any information received or obtained by such Director or any other authority, specified by him in the performance of their functions under this Act, as may, in the opinion of the Director or the other authority, so specified by him, be necessary for the purpose of the officer, authority or body specified in clause (i) or clause (ii) to perform his or its functions under that law.

Bar of suits in civil courts.

67. No suit shall be brought in any civil court to set aside or modify any proceeding taken or order made under this Act and no prosecution, suit or other proceeding shall lie against the Government or any officer of the Government for anything done or intended to be done in good faith under this Act.

Notice, etc., not to be invalid on certain grounds.

68. No notice, summons, order, document or other proceeding, furnished or made or issued or taken or purported to have been furnished or made or issued or taken in pursuance of any of the provisions of this Act shall be invalid, or shall be deemed to be invalid merely by reason of any mistake, defect or omission in such notice, summons, order, document or other proceeding if such notice, summons, order, document or other proceeding is in substance and effect in conformity with or according to the intent and purpose of this Act.

Recovery of fines.

69. Where any fine imposed on any person under section 13 or section 63 is not paid within six months from the day of imposition of fine, the Director or any other officer authorised by him in this behalf may proceed to recover the amount from the said person in the same manner as prescribed in Schedule II of the Income-tax Act, 1961 (43 of 1961) for the recovery of arrears and he or any officer authorised by him in this behalf shall have all the powers of the Tax Recovery Officer mentioned in the said Schedule for the said purpose.

Offences by companies.

70. (1) Where a person committing a contravention of any of the provisions of this Act or of any rule, direction or order made thereunder is a company, every person who, at the time the contravention was committed, was in charge of, and was responsible to the company, for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly :

Provided that nothing containing in this sub-section shall render any such person liable to punishment if he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent such contravention.

(2) Notwithstanding anything contained in sub-section (1), where a contravention of any of the provisions of this Act or of any rule, direction or order made thereunder has been committed by a company and it is proved that the contravention has taken place with the consent or connivance of, or is attributable to any neglect on the part of any director, manager, secretary or other officer of any company, such director, manager, secretary or other officer shall also be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section,—

- (i) “company” means any body corporate and includes a firm or other association of individuals; and
- (ii) “director”, in relation to a firm, means a partner in the firm.

Act to have overriding effect.

71. The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

Continuation of proceedings in the event of death or insolvency.

72. (1) Where—

- (a) any property of a person has been attached under section 8 and no appeal against the order attaching such property has been preferred; or
- (b) any appeal has been preferred to the Appellate Tribunal, and—
 - (i) in a case referred to in clause (a), such person dies or is adjudicated an insolvent before preferring an appeal to the Appellate Tribunal; or
 - (ii) in a case referred to in clause (b), such person dies or is adjudicated an insolvent during the pendency of the appeal,

then, it shall be lawful for the legal representatives of such person or the official assignee or the official receiver, as the case may be, to prefer an appeal to the Appellate Tribunal or as the case may be, to continue the appeal before the Appellate Tribunal, in place of such person and the provisions of section 26 shall, so far as may be, apply, or continue to apply, to such appeal.

(2) Where—

- (a) after passing of a decision or order by the Appellate Tribunal, no appeal has been preferred to the High Court under section 42; or
- (b) any such appeal has been preferred to the High Court,—

then—

- (i) in a case referred to in clause (a), the person entitled to file the appeal dies or is adjudicated an insolvent before preferring an appeal to the High Court, or
- (ii) in a case referred to in clause (b), the person who had filed the appeal dies or is adjudicated an insolvent during the pendency of the appeal before the High Court,

then, it shall be lawful for the legal representatives of such person, or the official assignee or the official receiver, as the case may be, to prefer an appeal to the High Court or to continue the appeal before the High Court in place of such person and the provision of section 42 shall, so far as may be, apply, or continue to apply to such appeal.

(3) The powers of the official assignee or the official receiver under sub-section (1) or sub-section (2) shall be exercised by him subject to the provisions of the Presidency-towns Insolvency Act, 1909 (3 of 1909) or the Provincial Insolvency Act, 1920 (5 of 1920), as the case may be.

Power to make rules.

73. (1) The Central Government may, by notification, make rules for carrying out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely :—

- (a) the form in which records referred to in this Act may be maintained;
- (b) the manner in which the order and the material referred to in sub-section (2) of section 5 to be maintained;
- (c) matters in respect of experience of Members under sub-section (3) of section 6;
- (d) the salaries and allowances payable to and other terms and conditions of service of Members of the Adjudicating Authority under sub-section (9) of section 6;
- (e) the salaries and allowances payable to and other terms and conditions of service of the officers and employees of the Adjudicating Authority under sub-section (3) of section 7;

- (f) the manner in which and the conditions subject to which the properties confiscated may be received and managed under sub-section (2) of section 10;
- (g) the additional matters in respect of which the Adjudicating Authority may exercise the powers of a civil court under clause (f) of sub-section (1) of section 11;
- (h) the nature and value of transactions in respect of which records shall be maintained under clause (a) of sub-section (1) of section 12;
- (i) the time within which the information of transactions under clause (b) of sub-section (1) of section 12 shall be furnished;
- (j) the manner in which records shall be verified and maintained by banking companies, financial institutions and intermediaries under clause (c) of sub-section (1) of section 12;
- (k) the procedure and the manner of maintaining and furnishing information under sub-section (1) of section 12 as required under section 15;
- (l) the manner in which the reasons and the material referred to in sub-section (2) of section 16 shall be maintained;
- (m) the rules relating to search and seizure under sub-section (1) of section 17;
- (n) the manner in which the reasons and the material referred to in sub-section (2) of section 17 shall be maintained;
- (o) the manner in which the reasons and the material referred to in sub-section (2) of section 18 shall be maintained;
- (p) the manner in which the order and the material referred to in sub-section (2) of section 19 shall be maintained;
- (q) the manner in which records authenticated outside India may be received under sub-section (2) of section 22;
- (r) the form of appeal and the fee for filing such appeal, under sub-section (3) of section 26;
- (s) the salary and allowances payable to and the other terms and conditions of service of the Chairperson and other Members of the Appellate Tribunal under section 30;
- (t) the salaries and allowances and the conditions of service of the officers and employees of the Appellate Tribunal under sub-section (3) of section 34;

- (ii) the additional matters in respect of which the Appellate Tribunal may exercise the powers of a civil court under clause (i) of sub-section (2) of section 35;
- (v) the additional matters in respect of which the authorities may exercise powers of a civil court under clause (f) of sub-section (1) of section 50;
- (w) the rules relating to impounding and custody of records under sub-section (5) of section 50;
- (x) any other matter which is required to be, or may be, prescribed.

Rules to be laid before Parliament.

74. Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Power to remove difficulties.

75. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as may appear to be necessary for removing the difficulty :

Provided that no order shall be made under this section after the expiry of two years from the commencement of this Act.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

SCHEDULE

[See section 2(y)]

PART A

PARAGRAPH 1

OFFENCES UNDER THE INDIAN PENAL CODE

| <i>Section</i> | <i>Description of offence</i> |
|----------------|---|
| 121 | Waging, or attempting to wage war or abetting waging of war, against the Government of India. |

| <i>Section</i> | <i>Description of offence</i> |
|----------------|--|
| 121A | Conspiracy to commit offences punishable by section 121 against the State. |

PARAGRAPH 2

*OFFENCES UNDER THE NARCOTIC DRUGS AND PSYCHOTROPIC
SUBSTANCES ACT, 1985*

| <i>Section</i> | <i>Description of offence</i> |
|----------------|---|
| 15 | Contravention in relation to poppy straw. |
| 18 | Contravention in relation to opium poppy and opium. |
| 20 | Contravention in relation to cannabis plant and cannabis. |
| 22 | Contravention in relation to psychotropic substances. |
| 23 | Illegal import into India, export from India or transshipment of narcotic drugs and psychotropic substances. |
| 24 | External dealings in narcotic drugs and psychotropic substances in contravention of section 12 of the Narcotic Drugs and Psychotropic Substances Act, 1985. |
| 25A | Contravention of orders made under section 9A of the Narcotic Drugs and Psychotropic Substances Act, 1985. |
| 27A | Financing illicit traffic and harbouring offenders. |
| 29 | Abetment and criminal conspiracy. |

PART B

PARAGRAPH 1

OFFENCES UNDER THE INDIAN PENAL CODE

| <i>Section</i> | <i>Description of offence</i> |
|----------------|---|
| 302 | Murder. |
| 304 | Culpable homicide not amounting to murder, if act by which the death is caused is done with the intention of causing death. |
| 307 | Attempt to murder. |
| 308 | Attempt to commit culpable homicide. |
| 327 | Voluntary causing hurt to extort property, or a valuable security, or to constrain to do anything which is illegal or which may facilitate the commission of the offence. |
| 329 | Voluntary causing grievous hurt to extort property, or a valuable security, or to constrain to do anything which is |

| <i>Section</i> | <i>Description of offence</i> |
|----------------|--|
| | illegal or which may facilitate the commission of the offence. |
| 364A | Kidnapping for ransom, etc. |
| 384 to 389 | Offences relating to extortion. |
| 392 to 402 | Offences relating to robbery and dacoity. |
| 467 | Forgery of a valuable security, will or authority to make or transfer any valuable security, or to receive any money, etc. |
| 489A | Counterfeiting currency notes or bank notes. |
| 489B | Using as genuine, forged or counterfeit currency notes or bank notes. |

PARAGRAPH 2

OFFENCES UNDER THE ARMS ACT, 1959

| <i>Section</i> | <i>Description of offence</i> |
|----------------|---|
| 25 | <p>To manufacture, sell, transfer, convert, repair or test or prove or expose or offer for sale or transfer or have in his possession for sale, transfer, conversion, repair, test or proof, any arms or ammunition in contravention of section 5 of the Arms Act, 1959.</p> <p>To acquire, have in possession or carry any prohibited arms or prohibited ammunition in contravention of section 7 of the Arms Act, 1959.</p> <p>Contravention of section 24A of the Arms Act, 1959 relating to prohibition as to possession of notified arms in disturbed areas, etc.</p> <p>Contravention of section 24B of the Arms Act, 1959 relating to prohibition as to carrying of notified arms in or through public places in disturbed areas.</p> <p>Other offences specified in section 25.</p> |
| 26 | <p>To do any act in contravention of any provisions of section 3, 4, 10 or 12 of the Arms Act, 1959 in such manner as specified in sub-section (1) of section 26 of the said Act.</p> <p>To do any act in contravention of any provisions of section 5, 6, 7 or 11 of the Arms Act, 1959 in such manner as specified in sub-section (2) of section 26 of the said Act.</p> <p>Other offences specified in section 26.</p> |

| <i>Section</i> | <i>Description of offence</i> |
|----------------|--|
| 27 | Use of arms or ammunitions in contravention of section 5 or use of any arms or ammunition in contravention of section 7 of the Arms Act, 1959. |
| 28 | Use and possession of fire arms or imitation fire arms in certain cases. |
| 29 | Knowingly purchasing arms from unlicensed person or for delivering arms, etc., to person not entitled to possess the same. |
| 30 | Contravention of any condition of a licence or any provisions of the Arms Act, 1959 or any rule made thereunder. |

PARAGRAPH 3

OFFENCES UNDER THE WILD LIFE (PROTECTION) ACT, 1972

| <i>Section</i> | <i>Description of offence</i> |
|-----------------------------|--|
| 51 read with section 17A | Contravention of provisions of section 17A relating to prohibition of picking, uprooting, etc., of specified plants. |
| 51 read with section 39 | Contravention of provisions of section 39 relating to wild animals, etc., to be Government property. |
| 51 read with section 44 | Contravention of provisions of section 44 relating to dealings in trophy and animal articles without licence prohibited. |
| 51 read with section 48 | Contravention of provisions of section 48 relating to purchase of animal, etc., by licensee. |
| 51 read with section 49B | Contravention of provisions of section 49B relating to prohibition of dealings in trophies, animal articles, etc., derived from scheduled animals. |

PARAGRAPH 4

OFFENCES UNDER THE IMMORAL TRAFFIC (PREVENTION) ACT, 1956

| <i>Section</i> | <i>Description of offence</i> |
|----------------|--|
| 5 | Procuring, inducing or taking person for the sake of prostitution. |
| 6 | Detaining a person in premises where prostitution is carried on. |
| 8 | Seducing or Soliciting for purpose of prostitution. |
| 9 | Seduction of a person in custody. |

PARAGRAPH 5

OFFENCES UNDER THE PREVENTION OF CORRUPTION ACT, 1988

| <i>Section</i> | <i>Description of offence</i> |
|----------------|---|
| 7 | Public servant taking gratification other than legal remuneration in respect of an official Act. |
| 8 | Taking gratification in order, by corrupt or illegal means, to influence public servant. |
| 9 | Taking gratification for exercise of personal influence, with public servant. |
| 10 | Abetment by public servant of offences defined in section 8 or section 9 of the Prevention of Corruption Act, 1988. |